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year report previously submitted to EPA under this section, the manufacturer's or remanufacturer's credits and credit calculations will be recalculated. Erroneous positive credits will be void. Erroneous negative credit balances may be corrected by EPA.

(3) If EPA review of a manufacturer's or remanufacturers end-of-year report indicates a credit shortfall, the manufacturer or remanufacturer will be permitted to purchase the necessary credits to bring the credit balance to zero. These credits must be supplied at the ratio of 1.1 credits for each 1.0 credit needed. If sufficient credits are not available to bring the credit balance to zero for the family(ies) involved, EPA may void the certificate(s) for that family(ies) *ab initio*. In addition, all locomotives and locomotive engines within an engine family for which there are insufficient credits will be considered to have violated the conditions of the certificate of conformity and therefore not covered by that certificate.

(4) If within 180 days of receipt of the manufacturer's or remanufacturer's end-of-year report, EPA review determines a reporting error in the manufacturer's or remanufacturer's favor (that is, resulting in an increased credit balance) or if the manufacturer or remanufacturer discovers such an error within 180 days of EPA receipt of the end-of-year report, the credits are restored for use by the manufacturer or remanufacturer.

EFFECTIVE DATE NOTE: At 63 FR 19057, Apr. 16, 1998, § 92.309 was added. This section contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 92.310 Notice of opportunity for hearing.

Any voiding of the certificate under this subpart will be made only after the manufacturer or remanufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 92.216 and, if a manufacturer or remanufacturer requests such a hearing, will be made only after an initial decision by the Presiding Officer.

40 CFR Ch. I (7–1–07 Edition)

Subpart E—Emission-Related Defect Reporting Requirements, Voluntary Emission Recall Program

§ 92.401 Applicability.

The requirements of this subpart are applicable to manufacturers and remanufacturers of locomotives and locomotive engines subject to the provisions of subpart A of this part. The requirement to report emission-related defects affecting a given class or category of locomotives or locomotive engines applies for eight years from the end of the year in which such locomotives or locomotive engines were manufactured, or remanufactured, as applicable.

§ 92.402 Definitions.

The definitions of subpart A of this part apply to this subpart.

§ 92.403 Emission defect information report.

(a) A manufacturer or remanufacturer must file a defect information report whenever it determines, in accordance with procedures it established to identify either safety-related or performance defects, (or based on other information) that a specific emission-related defect exists in ten or more locomotives or locomotive engines. No report must be filed under this paragraph for any emission-related defect corrected prior to the sale, or reintroduction into service of a remanufactured locomotive or locomotive engine, of the affected locomotives or locomotive engines to an ultimate purchaser.

(b) Defect information reports required under paragraph (a) of this section must be submitted not more than 15 working days after the same emission-related defect is found to affect 10 or more locomotives or locomotive engines. Information required by paragraph (c) of this section that is either not available within 15 working days or is significantly revised must be submitted as it becomes available.

(c) Except as provided in paragraph (b) of this section, each defect report must contain the following information in substantially the format outlined as follows:

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(1) The manufacturer's or remanufacturer's corporate name.

(2) A description of the defect.

(3) A description of each class or category of locomotives or locomotive engines potentially affected by the defect including make, model, calendar year produced, purchaser (or owner) and any other information as may be required to identify the locomotives or locomotive engines affected.

(4) For each class or category of locomotives and locomotive engines described in response to paragraph (c)(3) of this section, the following shall also be provided:

(i) The number of locomotives and/or locomotive engines known or estimated to have the defect and an explanation of the means by which this number was determined.

(ii) The address of the plant(s) at which the potentially defective locomotives or locomotive engines were produced.

(5) An evaluation of the emissions impact of the defect and a description of any operational or performance problems which a defective locomotive or locomotive engine might exhibit.

(6) Available emissions data which relate to the defect.

(7) An indication of any anticipated follow-up by the manufacturer or remanufacturer.

[63 FR 18998, Apr. 16, 1998, as amended at 70 FR 40456, July 13, 2005]

§ 92.404 Voluntary emissions recall reporting.

(a) When any manufacturer or remanufacturer initiates a voluntary emissions recall campaign involving a locomotive or locomotive engine, the manufacturer or remanufacturer shall submit to EPA a report describing the manufacturer's or remanufacturer's voluntary emissions recall plan as prescribed by this section within 15 working days of the date owner notification was begun. The report shall contain the following:

(1) A description of each class or category of locomotives or locomotive engines recalled including the number of locomotives or locomotive engines to be recalled, the calendar year if applicable, the make, the model, and such other information as may be required

to identify the locomotives or locomotive engines recalled.

(2) A description of the specific modifications, alterations, repairs, corrections, adjustments, or other changes to be made to correct the locomotives or locomotive engines affected by the emission-related defect.

(3) A description of the method by which the manufacturer or remanufacturer will notify locomotive or locomotive engine owners.

(4) A description of the proper maintenance or use, if any, upon which the manufacturer or remanufacturer conditions eligibility for repair under the remedial plan, an explanation of the manufacturer's or remanufacturer's reasons for imposing any such condition, and a description of the proof to be required of a locomotive or locomotive-engine owner to demonstrate compliance with any such condition.

(5) A description of the procedure to be followed by locomotive or locomotive-engine owners to obtain correction of the nonconformity. This shall include designation of the date on or after which the owner can have the nonconformity remedied, the time reasonably necessary to perform the labor to remedy the defect, and the designation of facilities at which the defect can be remedied.

(6) If some or all the nonconforming locomotives or locomotive engines are to be remedied by persons other than authorized warranty agents of the manufacturer or remanufacturer, a description of the class of persons other than authorized warranty agents of the manufacturer or remanufacturer who will remedy the defect.

(7) A copy of any written notification sent to locomotive or locomotive-engine owners.

(8) A description of the system by which the manufacturer or remanufacturer will assure that an adequate supply of parts will be available to perform the repair under the remedial plan including the date by which an adequate supply of parts will be available to initiate the repair campaign, the percentage of the total parts requirement of each person who is to perform the repair under the remedial